

CC 96-98

January 30, 1997

HAND DELIVERY

Ms. Regina M. Keeney
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

Dear Ms. Keeney:

Several local exchange carriers ("LECs") have recently threatened to discontinue their interconnection arrangements with our paging companies unless we continue to pay the LECs for traffic that originates on the LECs' networks, contrary to the clear language of section 51.703(b) of the Commission's rules. Such action would be contrary to the Commission's interconnection rules, the Communications Act, and the public interest in the continued availability of high-quality paging services. We respectfully request that the Common Carrier Bureau, as the body charged with enforcing the Commission's interconnection rules, remind LECs that section 51.703(b) applies to their interconnection arrangements with providers of paging and other commercial mobile radio services ("CMRS") and that an LEC may not threaten disconnection or disconnect a paging provider or any other CMRS provider that exercises its rights under section 51.703(b).^{1/}

Section 51.703(b) of the Commission's rules implements section 251(b)(5) of the Communications Act.^{2/} The rule states that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."^{3/} The Commission could not have been more specific in holding that the rule applies with respect to paging companies and other CMRS providers.^{4/} Consistent with section 51.703(b), we and other paging providers have notified LECs in the months since the rule became effective that we are no longer obligated to pay the LECs for traffic that originates on the LECs' networks.

^{1/} Section 51.703 of the Commission's rules was originally stayed by the Eighth Circuit, but the court lifted the stay with respect to that section by order of November 1, 1996. Iowa Utils. Bd., et al. v. FCC, No. 96-3321 (8th Cir., Nov. 1, 1996). Of course, disconnection or the threat of disconnection is inappropriate in the case of good faith disagreements between carriers.

^{2/} 47 U.S.C. § 251(b)(5).

^{3/} 47 C.F.R. § 51.703(b).

^{4/} See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; CC Docket No. 95-185, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) ("Local Competition Order"), at 500-01 ¶ 1042.

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Notwithstanding the clear language of section 51.703(b), an increasing number of LECs have taken the position that the rule somehow does not apply with respect to paging providers. At least one LEC has argued that the Eighth Circuit's stay of section 51.709(b) of the Commission's rules^{5'} enables it to continue to charge paging providers for one-way trunks it provides to route traffic from its network to paging networks. This argument would effectively read section 51.703(b) out of the rules for purposes of paging providers. Other LECs have threatened to terminate interconnection arrangements with our companies and other paging providers unless they agreed to continue to pay to terminate traffic that originates on the LEC networks, notwithstanding the Commission's rule, because such compensation is required under contracts or tariffs that were in effect prior to the effective date of section 51.703(b). At least one LEC actually disconnected AirTouch's paging network on these grounds. Another LEC refused interconnection unless the paging company agreed to pay for prohibited installation charges. The Commission has stated explicitly, however, that LECs must stop charging CMRS providers for LEC-originated traffic as of the effective date of the Local Competition Order.^{6'} This directive applies regardless of pre-existing arrangements and whether or not a paging provider and the LEC have commenced interconnection negotiations.

Section 51.703(b) precludes LECs from charging paging providers for any costs incurred by an LEC to bring traffic to the paging provider's switch, however such charges are denominated by the LEC.^{7'} We respectfully request that you reiterate this policy and the

^{5'} Section 51.709(b) addresses the rate structure for dedicated transmission facilities between two carriers' networks.

^{6'} Local Competition Order at ¶ 1042. We also seek affirmation that the effective date of section 51.703 was September 30, 1996. Where a court grants preliminary relief suspending the effect of an administrative order, which relief later proves to be unwarranted, the party injured by the stay "is entitled . . . to be restored by his adversary to that which he has lost thereby." Middlewest Motor Freight Bureau v. U.S., 433 F.2d 212, 226 (8th Cir. 1970) (internal quotation marks omitted), cert. denied, 402 U.S. 999 (1971). In such cases, the agency's order is "at all times binding . . . until [petitioners] successfully conclude[] a suit proving its invalidity; and restitution may be ordered for higher rates collected in violation of the order by virtue of the court's injunctive process in the absence of a final decision setting aside the order." Id. at 242.

^{7'} LECs have characterized such charges as usage charges; non-recurring charges for the installation of dedicated one-way trunks between the LEC switch and the paging switch; and circuit charges. None of these charges are permitted under section 51.703(b) because they are all charges for traffic originating the LEC's network. Nor should LECs be able to disguise these charges through other arrangements with CMRS provider, such as billing agreements. Paging carriers would, however, continue to pay the interoffice transport charges associated with an LEC's costs of transporting a call from the calling party's central office to the LEC tandem in connection with "wide area inbound calling" or "Type 2 reverse billing" plans, in which a party calling a paging number pays a local rate even if the call originates outside the LEC's local calling area.

Ms. Regina M. Keeney
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Commission's intent to enforce it. Your prompt attention to this matter will serve the public interest by addressing the recurring problems described above and enabling paging providers to continue to provide the kind of high-quality service the public has come to expect.

Thank you for consideration of our request.

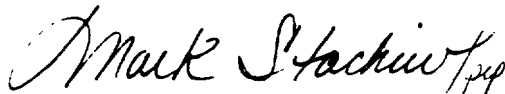
Sincerely,



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March 3, 1997

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Dear Ms. Massey, Ms. Abernathy, Mr. Stachiw, and Ms. St. Ledger-Roty:

This letter responds to your letter, dated January 30, 1997, that sets forth your concerns regarding disagreements among several local exchange carriers (LECs) and the paging companies that you represent. Among other things, you urge the Bureau to affirm that section 51.703(b) of the Commission's rules¹ prohibits LECs from charging Commercial Mobile Radio Service (CMRS) providers, including paging companies, for the traffic that originates on the LECs' networks, or from threatening to terminate their interconnection agreements with paging companies that refuse to pay such charges.

The record in the *Implementation of Local Competition Provisions of the Telecommunications Act of 1996* proceeding contains evidence that some LECs have historically charged CMRS carriers, including paging companies, for local telecommunications traffic that originates on the LECs' networks.² The Commission held that section 251(b)(5) of the 1934 Act, as amended by the Telecommunications Act of 1996,³ prohibits LECs from charging CMRS carriers to terminate traffic that originates on the LECs' networks.⁴ The Commission also held that "a LEC must cease charging a CMRS

¹ 47 C.F.R. § 51.703(b). We note that this rule was originally stayed by the United States Court of Appeals for the Eighth Circuit, but that the court lifted the stay with respect to this rule on November 1, 1996. *Iowa Utilities Board v. FCC*, No. 96-3321 (8th Cir., Nov. 1, 1996).

² *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, 16037-39 ¶¶ 1081, 1084 (*Local Competition Order*).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. § 151 *et seq.*

⁴ *Local Competition Order*, 11 FCC Rcd 15499, 16016 ¶ 1042.

provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge."⁵ Section 51.703(b) of our rules states that "a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."⁶ Because the 1934 Act defines the term "telecommunications carrier" to include CMRS providers, a LEC is prohibited by section 51.703(b) from assessing charges on CMRS providers "for local telecommunications traffic that originates on the LEC's network."

Sincerely,



Regina M. Keeney
Chief

Common Carrier Bureau

⁵ *Id.*, 16606 ¶ 1042.

⁶ 47 C.F.R. § 51.703(b).